



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California

April 3, 2017

Mr. Donovan Neese
Superintendent
Roosevelt Irrigation District
103 W. Baseline Road
Buckeye, AZ 85326

Re: RID Request for Time Critical Removal Action
West Van Buren Water Quality Assurance Revolving Fund Site

Dear Mr. Neese:

Your attorney, David Kimball, reached out to us on March 23, 2017, requesting that the U.S. Environmental Protection Agency adopt and fund a time critical removal action at the West Van Buren Water Quality Assurance Revolving Fund site in Phoenix, Arizona, in order to provide interim funding for operation of certain wells within the RID network. As Mr. Kimball points out, the West Van Buren WQARF site abuts the Motorola 52nd Street Superfund site to the west and shares some of the same potentially responsible parties. However, the Motorola 52nd Street Superfund site is listed on the NPL and is a federal Superfund site; the West Van Buren site is being addressed by the Arizona Department of Environmental Quality through its WQARF program. EPA must evaluate its interest in assuming any role at the West Van Buren Site in that context.

Mr. Kimball's email requests that EPA select a removal action under CERCLA authorities to aid RID in financing its wellhead treatment at certain RID wells that presumably draw contaminated groundwater within the West Van Buren WQARF site. As an initial matter, consistent with the CERCLA statute, policy, and regulation, EPA generally does not apply its removal authority for area-wide groundwater sites. CERCLA 104(a) authorizes time-critical removal actions to be taken in very specific circumstances where there is "a threat to public health or welfare... or the environment." Groundwater contamination that has migrated to impact areas beyond the original source area, but which is not currently used as drinking water or otherwise creating significantly elevated levels of exposure, is better addressed through remedial programs.

EPA's removal authority is limited to situations in which a "release or threat of release into the environment" of a hazardous substance, pollutant or contaminant presents "a threat to public health or welfare ... or the environment (CERCLA, 42 USC 104(a)(1)), and the National Contingency Plan, at 40 CFR section 300.415(b)(2), sets forth the specific factors to consider when selecting a removal action. These factors include "actual or potential exposure to human populations..." and "actual or potential contamination of drinking water supplies..." Furthermore, except in unusual circumstances, removal actions are limited to \$2 million over a 12-month duration. These

considerations inform the determination of whether a removal action is appropriate in a given situation as well as whether a remedial action would be more suitable.

It is EPA's understanding that the water being extracted from the wells that you are seeking assistance for is being used for agricultural purposes, not for drinking water. There does not appear to be any imminent exposure to the contamination in the aquifer. Although the aquifer may at some point be used for drinking water, that is not the condition right now.

In addition to asking for EPA to institute a removal action for the four contaminated wells, Mr. Kimball's email requests funding from EPA's removal program in order to do this. In the first instance, EPA does not provide grants for removal activities. Additionally, conditions for taking removal actions are generally limited by the CERCLA statute and corresponding regulations; those conditions are even tighter where Superfund monies are being requested. Specifically, CERCLA and the NCP require that Fund-financed removal actions incur less than \$2 million in costs and last no longer than a year (CERCLA Section 104(c)(1); 40 CFR 300.415(b)(5)). It is unclear what the total cost of the action is that you are looking to conduct but the proposal did not provide certainty regarding the duration or total potential costs. Although there are exemptions to these limitations, for the same reasons as are noted above, RID's situation would not qualify for an "emergency exemption." The "emergency exemption" is reserved for situations where response is required to prevent, limit, or mitigate an "emergency," where there is "immediate risk to public health or welfare or the environment," and there is no other timely assistance available.

Generally, absent time sensitivity or more critical exposure scenarios, EPA responds to groundwater contamination through its remedial authority because such sites are more complex and likely require more costly, complicated, and lengthy responses. This approach is consistent with ADEQ's treatment of the West Van Buren WQARF site as part of its remedial program. Were EPA to become involved with the West Van Buren site, it would require either that the state refer the site to EPA for potential listing on the NPL, which notably includes a lengthy evaluation process, or that the state refer any specific removal action based on a substantial threat. Neither of these approaches appear warranted at this juncture. Accordingly, we encourage you to continue working with ADEQ and the responsible parties to ensure that remedial action is taken in a timely manner to protect resources for future use.

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For any technical follow-up questions, please contact Rachel Loftin, the Remedial Project Manager for the Motorola 52nd Street site, at Loftin.Rachel@epa.gov or (415) 972-3253. For any legal questions, please have Mr. Kimball contact Bethany Dreyfus from our Office of Regional Counsel at Dreyfus.Bethany@epa.gov or (415) 972-3886. We appreciate any work that RID is doing to address contamination at the West Van Buren WQARF site and will continue to keep abreast of the progress made there.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Enrique Manzanilla', with a stylized, flowing script.

Enrique Manzanilla, Director
Superfund Division

Cc: David P. Kimball III, Gallagher & Kennedy
Misael Cabrera, Director ADEQ

